

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTIST PUBLISHING GROUP, LLC, et al.,

Plaintiffs,

v.

ORLANDO MAGIC, Ltd. d/b/a ORLANDO
MAGIC, et al.

Defendants.

Case No.: 24-cv-5461(JSR)

**DECLARATION OF
CHRISTOPHER WOODS IN
OPPOSITION OF DEFENDANT
ORLANDO MAGIC'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, CHRISTOPHER WOODS, declare and state as follows:

1. I am the Chief Operating Officer for TuneSat, LLC ("TuneSat"). I submit this declaration in opposition to Defendant Orlando Magic's Motion for Partial Summary Judgment. I have personal knowledge of all the facts stated below, except for those matters stated on information and belief, and as to those matters, I believe them to be true. I have been an officer at TuneSat for more than 15 years. I have extensive knowledge about TuneSat's systems and operations, as well as the types of data TuneSat collects.

TuneSat's General Processes

2. After identifying a company to monitor, TuneSat locates social media channels associated with the company. It then uses an automated process to download the videos from those social media channels. The automated system downloads all video content on the channel and does not perform any analysis or filtering of the downloaded

material. In fact, some of the downloaded videos may not even include music. After the videos have been downloaded, TuneSat's automated systems¹ analyze the videos using TuneSat's acoustic fingerprint technology to determine if the videos contain its clients' music.

3. In 2021, TuneSat periodically monitored channels from which its automated system previously downloaded videos by using its automated process to download new videos posted on those channels. Again, the downloading process did not filter or analyze the videos it downloaded, and the system would download all videos that had been posted since the last download. Here, too, some of the videos may not have even contained musical content.

TuneSat's working relationship with Kobalt

4. I am heavily involved in TuneSat's relationships with its clients, including Kobalt. I also have knowledge of TuneSat's agreement with Kobalt, which it entered into in May 2020. A true and correct copy of this agreement is attached as Exhibit 1

5. TuneSat has no ability to create acoustic fingerprints for a specific song until it obtains the audio file or specific metadata relating to the song. Obviously, TuneSat cannot find a detection in a video if it has not downloaded the video for analysis. With the exception of a limited number of videos for which TuneSat performs manual detections (explained below in paragraphs 23-24), it also cannot identify a detection of a client's work

¹For videos posted on TikTok, TuneSat conducts a manual review to determine if the videos contain its clients' music. This process is explained below at paragraphs 23-24.

if it does not have an acoustic fingerprint for that work. TuneSat has not created acoustic fingerprints for all the works in Kobalt's catalogue.

6. The purpose of the agreement between TuneSat and Kobalt is to ensure that TuneSat, in exchange for its services, receives a guaranteed portion of any monetary recovery obtained by Kobalt or Kobalt's legal representatives resulting from unauthorized uses of Kobalt's music detected by TuneSat. The May 2020 agreement contains a specific percentage to which TuneSat was entitled from such recoveries. In practice, this percentage is sometimes modified. For example, TuneSat will receive less than [REDACTED] of any judgment or settlement arising from the present litigation.

7. TuneSat has never directly or indirectly entered into or engaged in any settlement negotiations on behalf of Kobalt. In fact, TuneSat cannot provide legal advice or services. Similarly, TuneSat has never proposed or approved any settlement agreements involving Kobalt. TuneSat has also never tried to independently monetize any potential infringements on behalf of Kobalt. TuneSat does not require, and has never required, Kobalt's consent (whether in writing or verbally) before Kobalt engages in or initiates settlement negotiations. Additionally, TuneSat never contacted or attempted to retrain a potential infringer on Kobalt's behalf, including the Orlando Magic.

8. Settlement negotiations and agreements involving Kobalt are the purview of Kobalt and its attorneys. As a general matter, TuneSat is informed of a settlement or an impending settlement by either Kobalt or its attorneys. The purpose of conveying this information to TuneSat is so that TuneSat can either cease or modify its data collection related to the settling matter.

9. TuneSat has no control over the law firm that Kobalt uses to pursue claims of copyright infringement. The choice of a law firm is left to the sole discretion of Kobalt.

TuneSat has a relationship with the Kuhn Law Group (“KLG”), but Kobalt is not required to use KLG. In this litigation, for instance, KLG does not represent Kobalt.

10. TuneSat does not administer, and has never administered, any music rights belonging to Kobalt. TuneSat’s relationship with Kobalt is limited to providing Kobalt with detections, and related data, of Kobalt’s music.

11. KLG does not have general access to TuneSat’s databases or detection results. TuneSat provides KLG, or any law firm representing TuneSat’s clients, with limited access to specific information related to detection results through TuneSat’s Case Management Portal. And TuneSat only provides this limited access, as explained below, after it has completed a quality control review of the detections.

The two charts in the Orlando Magic’s Summary Judgment Memorandum

12. Orlando Magic’s Summary Judgment Memorandum contains two charts. The first chart begins on page 13 of the Memorandum, and the second chart begins on page 15 of the Memorandum.

13. The data in the charts comes from TuneSat. Information about TuneSat’s processes is needed in order to meaningfully understand that data.

14. First, it is important to recognize that (a) each detection TuneSat identifies goes through a quality control process before TuneSat makes that detection, and its related metadata, available to a law firm for that firm’s review; and (b) none of the data in

these charts reflects when TuneSat completed its quality control process for any given detection.

15. TuneSat's quality control process involves employees reviewing each video with a detection to ensure that video actually contains the client's music. Employees will also confirm the client's ownership of the detected music. Additionally, employees will ensure that all required metadata fields for the music are accurate and complete. Finally, employees may make some annotations for the detection if it appears, for instance, that the video in which the music has been detected is an artist promotion.

16. TuneSat has multiple clients with millions of copyright interests. In the period from January 1, 2021 through July 18, 2021, there were nearly 390,000 detections for which TuneSat needed to perform a quality control review, across multiple clients. Of these detections, approximately 21,000 were for Kobalt's music. On average, during the first part of 2021, TuneSat performed its quality control process on 10,000 to 12,000 detections per week.

17. In 2021, TuneSat did not capture in its systems the date on which it completed the quality control process for a detection. That said, TuneSat only makes detections available to a law firm after the detections have passed the quality control review. Thus, for the uses at issue in this lawsuit, the date on which TuneSat made a detection available to KLG is the earliest date TuneSat can guarantee that the detection had gone through the quality control process.

18. In terms of further explaining the information in the charts from the Orlando Magic's Summary Judgment Memorandum, I have grouped the detections into the

following categories, which are explained below: *FP Alias*; *FP Created After Video Download*; *Channel Discovery*; and *TikTok Protocol*. The two charts the Orlando Magic included in its Memorandum are reproduced below with an additional column titled *Category*, which identifies the category from above that pertains to each use in the charts.

Orlando Magic Chart #1 (beginning on page 13 of Summary Judgment Memorandum)						
Song Title	Claimant (s)	Page URL	Date Fingerprinted	Date Downloaded	Date Found	Category
Want to Want Me	APG	http://www.facebook.com/OrlandoMagic/videos/1015339719696699/	6/15/21	7/13/20	7/13/20	<i>FP Alias</i>
All I Do Is Win	Notting Hill; FNG	http://www.instagram.com/p/BgW3LYvhVE4	6/15/21	7/27/20	8/17/20	<i>FP Alias</i>
Boyfriend	APG	https://www.youtube.com/watch?v=71ThZlT8c_s	6/15/21	7/10/20	8/17/20	<i>FP Alias</i>
GDFR	APG	http://www.twitter.com/br_orlandomagic/status/1211819248349261831	6/15/21	7/27/20	8/17/20	<i>FP Alias</i>
Lean On (feat. MØ & DJ Snake)	Prescription	https://www.tiktok.com/@orlandomagic/video/6760704369206791430	6/15/21	10/26/20	10/26/20	<i>FP Alias</i>
A Little Party Never Killed Nobody (All We Got)	KMA Assets I LP; Notting Hill	https://www.youtube.com/watch?v=Ww31SBgFI04	10/31/20	7/10/20	2/19/21	<i>FP Created After Video Download</i>

It's Gonna Be Me	MXM	http://www.facebook.com/OrlandoMagic/videos/1015538813380699/	11/27/20	7/13/20	2/19/21	FP Created After Video Download
Hot n Cold	Prescription; Kasz; MXM	https://www.nb.com/magic/video/jr-dance-camp-halftime-performance	10/31/20	6/26/21	6/26/21	Channel Discovery
I Cry	APG	https://www.nb.com/magic/video/jr-dance-camp-halftime-performance	10/31/20	6/26/21	6/26/21	Channel Discovery
Type of Way	APG	https://www.nb.com/magic/video/2013/11/26/MagicMatchupRookie11261376ersmov-3055047	10/31/20	6/26/21	6/26/21	Channel Discovery
We Own It	APG	https://www.nb.com/magic/magics-3d-court-projection-player-intro	10/31/20	6/26/21	6/26/21	Channel Discovery
Type of Way	APG	https://www.nb.com/magic/video/2013/12/5/magicmatchupknicks120513mov-3065866	10/31/20	6/26/21	6/26/21	Channel Discovery
Type of Way	APG	https://www.nb.com/magic/video/2014/1/6/ROYRACEmov-3097971	10/31/20	6/26/21	6/26/21	Channel Discovery
I Love It (feat. Charli XCX)	KMA Assets II Limited	https://www.youtube.com/watch?v=tusFk16c-4	7/13/21	7/10/20	7/13/21	FP Alias
TiK ToK	Prescription; Kasz	https://www.tiktok.com/@orlandomagic/video/6742444936450280710	7/13/21	10/26/20	7/13/21	FP Alias

Time of Our Lives	Prescription; Kasz	http://www.facebook.com/OrlandoMagic/videos/1015386084608699/	7/13/21	7/13/20	7/13/21	FP Alias
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Orlando Magic Chart #2 (beginning on page 15 of Summary Judgment Memorandum)						
Song Title	Claimant(s)	Page URL	Date Fingerprinted	Date Downloaded	Date Found	Category
See You Again	APG	https://www.tiktok.com/@orlandomagic/video/6748773129323171077	10/31/2020	10/26/2020	11/12/2021 [manual ingest date]	TikTok Protocol
See You Again	APG	https://www.tiktok.com/@orlandomagic/video/6753263308381392134	10/31/2020	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol
See You Again	APG	https://www.tiktok.com/@orlandomagic/video/6757061927286885638	10/31/2020	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol
GDFR	APG	http://www.instagram.com/p/B6tqe2H4q_	11/27/2020	7/26/2020	10/2/2021	FP Created After Video Download
No Idea	APG	https://www.tiktok.com/@orlandomagic/video/6777374670535527686	10/31/2020	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol
Type of Way	APG	https://www.nba.com/magic/video/2013/11/19/magicmatchupheat111913mov-3046300	2/22/2024	6/26/2021	3/1/2024	FP Created After Video Download
Fantasy	APG; KMA Assets	https://www.tiktok.com/@orlandomagic/video/6839445128600472838	10/31/2020	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol

Orlando Magic Chart #2 (beginning on page 15 of Summary Judgment Memorandum)						
Song Title	Claimant(s)	Page URL	Date Fingerprinted	Date Downloaded	Date Found	Category
...Baby One More Time	MXM	https://www.tiktok.com/@orlandomagic/video/6819347646663249157	10/31/2020	10/26/2020	11/16/2021 [manual ingest date]	TikTok Protocol
(I Know I Got) Skillz	Notting Hill	http://www.facebook.com/OrlandoMagic/videos/768008300338215/	2/22/2024	7/13/2020	2/28/2024	FP Created After Video Download
My First Kiss		https://www.nba.com/magic/video/ir-dance-camp-halftime-performance	2/22/2024	8/14/2022	3/8/2024	FP Created After Video Download
Boys	Prescription	https://www.tiktok.com/@orlandomagic/video/6783283598570081542	11/27/2020	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol
Don't Start Now	Prescription	https://www.tiktok.com/@orlandomagic/video/6801086029760711941	NO MATCH	10/26/2020	12/7/2021 [manual ingest date]	TikTok Protocol

FP Alias

19. Entries in which the “Date Found” falls after the “Date Fingerprinted” are notated as *FP Aliases*. Here, TuneSat had previously created acoustic fingerprints for the songs at issue on behalf of clients other than Kobalt. TuneSat’s automated systems analyzed the downloaded videos against these pre-existing fingerprints. The “Date Downloaded” and “Date Found” entries reflect work TuneSat performed for these other

clients, as this information is automatically linked to each acoustic fingerprint in TuneSat's database.

20. When Kobalt subsequently informed TuneSat that it administered rights for these songs, TuneSat searched its reference database of acoustic fingerprints and identified these pre-existing fingerprints. TuneSat then created copies or "aliases" of these fingerprints to associate them with Kobalt. Because the original acoustic fingerprints are associated with the download and detection data, these aliases are too, even though TuneSat did not originally capture this information for Kobalt. Therefore, the earliest date on which a detection could be properly attributed to Kobalt as a rightsholder for these songs is the date shown in the "Date Fingerprinted" column.

FP Created After Video Download

21. The *FP Created After Video Download* category refers to instances where TuneSat downloaded videos for analysis before Kobalt provided information to TuneSat to allow it to create the acoustic fingerprints to analyze the videos. Given the massive amount of data TuneSat analyzes, in some instances it can take TuneSat additional time to analyze downloaded videos against new fingerprints.

Channel Discovery

22. Entries with the *Channel Discovery* notation refer to channels that TuneSat was not initially aware that contained videos with detections. Nearly all of TuneSat's detection work for videos posted on the internet is confined to social media websites, such as Instagram, Facebook, and TikTok. As a general practice, TuneSat does not search for videos posted outside of these social media "channels." When TuneSat became aware that

videos with potential detections were posted on a corporate website, in this case www.nba.com, it began the process of downloading those videos. Thus, the Date Downloaded for a video with a detection that has the *Channel Discovery* notation may not be close in time to the date the fingerprint was created for the detected song.

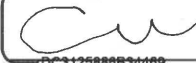
TikTok Protocol

23. Entries that are marked with “[manual ingest date]” in the “Date Found” column were subject to TuneSat’s *TikTok Protocol*. This refers to a specific procedural adaptation implemented by TuneSat in response to detection challenges. In the fall of 2021, TuneSat discovered that its automated acoustic fingerprinting system was failing to identify all detections in numerous TikTok videos. Upon investigation, TuneSat determined that highly-manipulated audio tracks commonly featured in TikTok content were preventing accurate automated identification.

24. To address this limitation, TuneSat instituted a protocol requiring manual review of TikTok videos that had been downloaded by its system. This manual review process is significantly more time-intensive than the standard automated procedure. Furthermore, when this protocol was initiated in fall 2021, TuneSat faced a substantial inventory of previously downloaded TikTok videos that required retroactive manual review. Consequently, for entries bearing the *TikTok Protocol* notation, the interval between the “Date Downloaded” and “Date Found” may be considerably extended, reflecting the additional time required for manual processing during this transitional period.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2025

DocuSigned by:

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Christopher Woods